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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

N.Z., R.M., B.L., S.M., and A.L., individually and on behalf of themselves and all others similarly situated,
 	
            Plaintiffs,
 	
    v.
 	
FENIX INTERNATIONAL LIMITED, FENIX INTERNET LLC, BOSS BADDIES LLC, MOXY MANAGEMENT, UNRULY AGENCY LLC (also d/b/a DYSRPT AGENCY), BEHAVE AGENCY LLC, A.S.H. AGENCY, CONTENT X, INC., VERGE AGENCY, INC., AND ELITE CREATORS LLC,
            Defendants.
	Case No. 8:24-cv-01655-FWS-SSC
	
	PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO WITHDRAW ECF NOS. 138, 141, 142, AND 158, AND FILE CORRECTIVE BRIEFS
	
	Judge: Hon. Fred W. Slaughter
	Courtroom: 10D
	Date: September 25, 2025
	Time: 10:00 a.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 25, 2025, at 10:00 a.m., in Courtroom 10D of the Ronald Reagan Federal Building and United States Courthouse, located at 411 West 4th Street, Santa Ana, California 92701, Plaintiffs N.Z., R.M., B.L., S.M., and A.L. ("Plaintiffs") will and hereby do move for an order granting Plaintiffs leave to withdraw ECF Nos. 138, 141, 142, and 158, and file corrective briefs.

This request is based on this Notice, the attached Memorandum of Points and Authorities, and Declaration of Robert B. Carey.

On August 20, 2025, Plaintiffs' counsel conferred with Defendants Fenix International Limited's and Fenix Internet LLC's (collectively, "Fenix") counsel via Zoom, under Local Rule 7-3, to explain what had occurred to cause the errors and to meet and confer about whether Fenix opposed Plaintiffs' forthcoming Motion for Leave to Withdraw ECF Nos. 138, 141, and 158, and File Corrective Briefs ("Motion"). Fenix stated that they would oppose Plaintiffs' Motion.

As more fully described in the accompanying Memorandum in Support, this Motion is made upon the grounds that good cause exists to allow Plaintiffs to withdraw ECF Nos. 138, 141, 142, and 158, and file corrective briefs. This Motion is based on this Notice and the Memorandum in Support, as well as all papers and pleadings on file herein, and such arguments as the Court may permit.

DATED this 28th day of August, 2025.

HAGENS BERMAN SOBOL SHAPIRO LLP

By: */s/ Robert B. Carey*
       Robert B. Carey

Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I.   INTRODUCTION

Plaintiffs request leave to withdraw ECF Nos. 138, 141, 142,[1] and 158, and file corrective briefs. The corrected briefs and redlines of those briefs are attached as Exhibits 2–9 to the Declaration of Robert B. Carey. After reviewing Fenix's replies and supporting declarations to their Request for Judicial Notice, Motion to Dismiss, and Motion for Reconsideration, undersigned counsel performed a thorough review of all the briefs they recently filed in this case and performed an internal investigation to determine how hallucinated cites ended up in the briefs. In performing that investigation, they determined that an attorney who has not appeared in this action, but has been working in a co-counsel capacity, used artificial intelligence ("AI") to draft portions of the response briefs. Plaintiffs file this motion to explain what happened to the Court and to request permission to withdraw the previously filed responsive briefs and file corrective briefs so the case may be decided on the merits.[2]

II.   FACTS

A.   Hagens Berman has a long-standing co-counsel relationship with Celeste Boyd.

Hagens Berman, and in particular Robert Carey, has had a professional relationship with Celeste Boyd for well over ten years. Declaration of Robert B. Carey ("Carey Decl.") ¶ 5. Ms. Boyd is a Yale-educated lawyer who has practiced

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[1] As explained in Section III.C. below, Plaintiffs did not confer with the Agency Defendants about moving to file a corrective brief for ECF No. 142. Because they discovered some AI errors in the course of their investigation, they include it here for full transparency.

[2] Plaintiffs acknowledge that they had indicated to the Court their intent to file this motion on August 27, 2025. In finalizing the filing, however, they wished to take additional time to confirm the accuracy of their representations, and therefore are submitting it the following morning after completing those checks.

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law for twenty years. Declaration of Celeste H.G. Boyd ("Boyd Decl.") ¶ 12. Ms. Boyd's primary tasks in working with Hagens Berman included being a legal analyst and brief writer. Carey Decl. ¶ 5. She has researched and written briefs on sophisticated matters requiring meticulous attention to detail and advanced legal analysis. *Id.* During that time she has worked in a co-counsel capacity with Hagens Berman, as well as with lawyers at other firms on joint litigation teams. *Id.* Her contributions have been valued by all attorneys who have worked with her.[3] *Id.*

During the time Ms. Boyd worked with Hagens Berman, Mr. Carey found her work product to be exemplary, professional, meticulously researched, and sophisticated in its level of legal analysis. *Id.* ¶ 6. Her written work has consistently shown the highest standards of legal scholarship and attention to detail that one would expect from an attorney of her caliber and educational background. *Id.* Mr. Carey has never found Ms. Boyd prone to avoiding work. *Id.*

Hagens Berman has never had an issue like this with Ms. Boyd's work, nor has anyone Mr. Carey knows who has worked with her professionally. *Id.* ¶ 7. The errors identified in the subject briefs are completely inconsistent with Ms. Boyd's established track record and professional standards, where she thoroughly researches issues and provides work product that is thoroughly vetted and cite-checked. *Id.*

B.   Ms. Boyd, under the duress of a family tragedy, decided to use ChatGPT.

Given Ms. Boyd's ability to handle complex legal issues, she was tasked with helping draft, compile, and finalize the Response to Fenix's Motion to Dismiss ("Response to the Fenix MTD"), Response to Fenix's Request for Judicial Notice

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[3] One co-counsel in an unrelated case called Mr. Carey when he heard the news and said he planned to send something to the Court so it understood Ms. Boyd's level of work and commitment to providing the best work product possible. Carey Decl. ¶ 5.

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and Defendants Motion to Strike ("Response to the RFJN"), and Consolidated

Response to the Agency Defendants' Motions to Dismiss ("Response to the

Agencies' MTDs"). Carey Decl. ¶ 8. Co-counsel at Tycko & Zavareei LLP

("Tycko") and Dorsey & Whitney LLP ("Dorsey") drafted portions of those briefs

and sent them to Ms. Boyd, who then incorporated and compiled the briefs. *Id.* ¶ 9.

Neither firm used AI to draft their portions of the briefs, nor were they involved in

finalizing the briefs.[4] *Id.* Hagens Berman conferred extensively with Ms. Boyd in

developing the arguments, but when the filing deadline arrived, Ms. Boyd was still

editing her sections of all three briefs and merging other sections. *Id.* ¶ 11. Given

the delay and the quality of her work, Hagens Berman did not perform a full cite-

check on her work.[5] *Id.* ¶¶ 11, 23.

Ms. Boyd was also later tasked with drafting and assisting with finalizing the

Response to Fenix's Motion for Reconsideration.[6] *Id.* ¶ 13. Hagens Berman was

tasked with finalizing the briefs jointly with Ms. Boyd and filing them. *Id.* Hagens

Berman conferred extensively with Ms. Boyd in developing the arguments, but

when the filing deadline arrived, Ms. Boyd was still editing her sections of all three

briefs and merging other sections. *Id.* ¶ 13. Ms. Boyd was drafting and editing the

brief the day it was due. *Id.* Given the last-minute drafting and editing, Hagens

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[4] Timoney Knox LLP ("Timoney") was not involved in drafting or finalizing the briefs. Carey Decl. ¶ 9.

[5] Undersigned counsel notes that Christopher Pitoun of Hagens Berman, who is acting as local counsel in this case, was not involved in the drafting or filing of these briefs.

[6] Dorsey and Timoney were not involved at all in the drafting or finalizing of the Response to the Motion for Reconsideration. Tycko provided some portions, but did not use AI in any of its drafting and had no involvement in finalizing or filing the Response. Carey Decl. ¶ 13. Hagens Berman was tasked with finalizing the briefs jointly with Ms. Boyd and filing them. *Id.*

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1   Berman again did not cite check Ms. Boyd's work given her history of excellence.

2   *Id.*

3   At the time these briefs were being written, Ms. Boyd was dealing with some

4   personal issues, including her father being in hospice and his ultimate death just

5   days after the Response to the Motion for Reconsideration was filed. Boyd Decl. ¶¶

6   6–13. She had previously used ChatGPT as a sounding board, specifically to help

7   her organize outlines, draft narratives, and solidify arguments. *Id.* ¶ 16. She knew

8   that in using ChatGPT, she had to develop processes to supervise its output,

9   including thoroughly checking everything it produced. *Id.* ¶ 17. In dealing with the

10   rapid decline of her father's health, Ms. Boyd proceeded to use it to draft portions

11   of the briefs, analyze the legal research she performed, and combine and shorten

12   work provided by other attorneys on the case. *Id.* ¶¶ 18–19. Ms. Boyd believed she

13   could control the AI—giving the tool explicit instructions that would prevent it

14   from hallucinating—and check it at the end of the process. She knew that a critical

15   part of the process was to check everything at the end, but she failed to do that here.

16   *Id.* ¶ 17. Because she was dealing with a personal crisis, she ran out of time and did

17   not check her work. *Id.* ¶ 18. Regrettably, and to the detriment of those listed as

18   Plaintiffs' counsel on the case, she did not inform Hagens Berman or any other co-

19   counsel of her use of AI or advise them that her work had not been adequately

20   checked. *Id.* ¶ 19.

21   Ms. Boyd's use of ChatGPT resulted in four categories of errors, as detailed

22   below in Section III.B. While Ms. Boyd does not know exactly how all of these

23   errors occurred, they were the result of her using ChatGPT. Boyd Decl. ¶ 22–26. To

24   the extent she could explain her errors, those are identified in Appendix A to her

25   declaration ("Boyd Decl. App. A"). First, there was a single hallucinated case

26   across three briefs. As Ms. Boyd explains, that hallucination came from putting a

27   placeholder in her brief that she needed to find a case, and that ChatGPT filled in

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without her requesting it do so. Boyd Decl. App. A. Second, there are cases that were cited for the correct proposition, but the quotation or parenthetical was incorrect. Third, there were cases that exist, but cited for the wrong proposition. And fourth, there was an incorrect record cite that resulted in bad argument. That was caused by Ms. Boyd asking ChatGPT to draft an argument based on the Court's Order found at ECF No. 117.[7]

While undersigned counsel was aware that Ms. Boyd's father was having medical issues, they were unaware of the toll it was taking on her. Carey Decl. ¶ 15. During conferences there was nothing unusual in Ms. Boyd's work during the briefing process or during counsel's many conferences on the legal issues, where she was immersed in the facts of the case and the case law surrounding the legal issues. *Id.* Ms. Boyd did not inform undersigned counsel of her difficulties, nor did she request help. *Id.* ¶ 16; Boyd Decl. ¶ 19. Ms. Boyd also did not inform undersigned counsel that she was using AI in any capacity. Boyd Decl. ¶ 19.

C.   Hagens Berman failed in their supervision of Ms. Boyd.

Hagens Berman did not perform a thorough cite-check of Ms. Boyd's work before filing the final briefs with the Court. Carey Decl. ¶¶ 10–11, 13, 23. Hagens Berman's standard practice is to proof and check sections or contributions by other firms on our litigation team, but because of the close relationship, long history, and Ms. Boyd's role on the project, we did not check her work, just sections from other firms. *Id.* ¶ 10. We failed to undertake a full cite-check of her work for two reasons. First, Hagens Berman had a long-standing relationship with Ms. Boyd, where her performance and work product over the years was impeccable. In working with Ms. Boyd for over ten years, Hagens Berman had the opportunity to review dozens of her briefs and in that time, she has never written a brief that was not accurately and

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[7] Plaintiffs will be filing a Notice of Withdrawal of Opposition to the Request for Judicial Notice.

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1 thoroughly cite checked. *Id.* ¶¶ 5–7. In short, undersigned counsel trusted the

2 quality of her work—just like they would for any attorney they had a long-standing

3 relationship with—based on her past performance and knowledge of her wok

4 product. Second, the briefs were still being drafted the day they were due, and

5 undersigned counsel simply did not have the time they needed to perform a full

6 cite-check, but Mr. Carey did perform a spot check to ensure certain cases were real

7 and pertained to the subject. Carey Decl. ¶¶ 11, 13, 23. Undersigned counsel takes

8 full responsibility for that failure.

9 **D.   Hagens Berman apologizes and will endeavor to rectify their mistake.**

10   Undersigned counsel acknowledges that the errors that occurred represent an

11 unfortunate departure from both Ms. Boyd's established professional standards and

12 Hagens Berman's quality control procedures. Carey Decl. ¶ 17. Undersigned

13 counsel accepts responsibility for its role in not implementing further safeguards

14 that might have caught these issues before filing. *Id.* Undersigned counsel has

15 apologized to counsel for Fenix and apologizes to the Court. *Id.* ¶ 18. Hagens

16 Berman is not a firm that takes shortcuts and the many lawyers that helped on this

17 case did not do so—undersigned counsel's previous work with this Court shows

18 that the firm tries to produce quality briefs for the Court. *Id.* Ms. Boyd's biggest

19 mistake was just not telling undersigned counsel, because each Plaintiffs' counsel

20 who has appeared in this case feels terrible that she did not feel she could come to

21 any member of the team for help, support, or relief on her assignments. *Id.* ¶ 16.

22   Hagens Berman is and will be implementing corrective measures so this does

23 not happen in the future. While Hagens Berman has had an AI policy since 2023—

24 prohibiting the use of generative AI for legal research or writing and requiring

25 attorneys and paralegals to review and comply with all courts' AI requirements—it

26 does not have any specific policies regarding co-counsel's use of AI. *Id.* ¶ 20. As

27 such, Hagens Berman has tasked its Management Committee with reviewing its

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existing AI policies and creating new policies to address the use of AI by co-counsel and contractors. *Id.* ¶ 20. Hagens Berman also plans on organizing in-house training to address the responsible use of AI in legal practice and reinforce best practices for review. *Id.* ¶ 21. Undersigned counsel is also reviewing their internal procedures to ensure their quality control catches any issues in the future, and will reach out to experts in the area to help establish procedures for handling situations where deadlines and processes collide for reasons somewhat outside their control. *Id.* ¶ 22.

Last, all Plaintiffs' counsel that have appeared in this case are cognizant of the Court's requirements regarding the use of AI set forth in Section VIII.h of the Court's Standing Order. When undersigned counsel filed the relevant briefs, Mr. Carey believed he had complied with Section VIII.h because he was not aware that AI had been used to generate any part of Plaintiffs' briefs. *Id.* ¶ 23. Mr. Carey is now aware that the briefs did not comply with the Court's standing order and takes responsibility for that failure. *Id.* ¶ 24. In drafting the proposed corrective briefs, undersigned counsel made minimal changes or withdrew superfluous assertions to avoid prejudicing Fenix. *Id.* While AI was not used in the drafting of the corrected portions of the briefs, AI was used in the original briefs. *Id.* In correcting their errors, undersigned counsel also undertook a review of the Response to the Agencies' MTDs—as AI had been used to draft that brief—and found some minimal errors there as well. To provide full transparency to the Court, they provide a corrective Response to the Agencies' MTDs.

III.   ARGUMENT

A.   Undersigned counsel was not attempting to deceive the Court or Fenix and the motions should be heard on the merits.

As explained in detail above, undersigned counsel was not trying to mislead the Court or prejudice Fenix. These errors were not intentional, but were made by an attorney dealing with a family tragedy and personal struggles. Rather than share

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1   those struggles with undersigned counsel, she used ChatGPT to help her without

2   letting undersigned counsel know. Undersigned counsel accepts responsibility for

3   not thoroughly checking her work, but they also had no indication—based on over a

4   decade of working with Ms. Boyd—that her work would require the level of review

5   that, in retrospect, was needed here.

6   Fenix cites *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023),

7   which found that "[a]n attempt to persuade a court or oppose an adversary by

8   relying on fake opinions is an abuse of the adversary system." Here, undersigned

9   counsel is not attempting to persuade the Court or oppose Fenix by relying on fake

10 opinions. In *Mata*, the attorney who drafted the brief used ChatGPT, admitted he

11 could not find at least one of the cited cases, but relied on it anyway *Id.* at 451.

12 Additionally, the attorneys in that case did nothing to "come[] clean about their

13 actions" and made no attempt to correct their errors. *Id.* at 449. In fact, those

14 attorneys waited more than two months to address their mistakes, after the court

15 issued an order to show cause. *Id.* (errors were identified by opposing counsel on

16 March 15 and attorneys waited until May 25 "to dribble out the truth" after an order

17 to show cause). Last, those attorneys never sought to withdraw the brief "or advise

18 the Court that it may no longer rely upon it." *Id.* at 459.

19   Here, undersigned counsel immediately made efforts to explain to the Court

20 how the errors occurred and to withdraw and replace the briefs. As soon as Fenix

21 filed its replies and supporting declarations, Hagens Berman undertook an

22 investigation to figure out what occurred, contacted counsel for Fenix to explain the

23 situation, and notified the Court of their error and that they would be filing a motion

24 to correct their briefing as soon as possible under the local rule. These actions all

25 occurred withing three days of Fenix's filing.

26   Fenix cites *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 389–90 (1990),

27 where a law firm was sanctioned for performing an inadequate investigation before

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1   filing an antitrust suit. There the court found that [t]he filing of complaints, papers,

2   or other motions without taking the necessary care in their preparation is a separate

3   abuse of the judicial system, subject to separate sanction." *Id.* at 398. The attorneys

4   in that case performed a cursory and inadequate investigation before filing their

5   complaint. *Id.*at 389. Here, undersigned counsel did not bring a frivolous lawsuit—

6   Plaintiffs' First Amended Complaint demonstrates an extensive investigation—and

7   they immediately sought to correct the briefs in a way that will not prejudice Fenix.

8   Fenix next cites *Lacey v. State Farm Gen. Ins. Co.*, No. CV 24-5205 FMO

9   (MAAX), 2025 WL 1363069, at *3 (C.D. Cal. May 5, 2025) for the proposition

10   that "no reasonably competent attorney should out-source research and writing to

11   this technology – particularly without any attempt to verify the accuracy of that

12   material." Undersigned counsel does not disagree with that proposition, but notes

13   the factual circumstances are different here. In *Lacey*, the Plaintiff was represented

14   by two law firms: Ellis George and K&L Gates. An attorney at Ellis George used

15   "various AI tools to generate an 'outline' for" a supplemental discovery brief,

16   which contained "problematic legal research." *Id.* at *1. The outline was then sent

17   to K&L Gates without informing them of the use of AI. *Id.* at *2. K&L Gates then

18   incorporated that research into the brief. *Id.* at *2. The magistrate judge then

19   discovered that two authorities were inaccurate and emailed the lawyers at K&L

20   Gates. The lawyers then re-submitted the briefs without the two cites, claiming the

21   errors were inadvertent, but leaving the "AI-generated problems in the body of the

22   text." *Id.* Only later did the magistrate judge "discover that Plaintiff's lawyers used

23   AI – and re-submitted the brief with considerably more made-up citations and

24   quotations beyond the two initial errors – until [he] issued a later OSC soliciting a

25   more detailed explanation." *Id.* While the Court did strike the supplemental briefing

26   regarding on the discovery issue, it did so because "(a) the initial undisclosed use of

27   AI, (b) the failure to cite-check the Original Brief, and (perhaps most egregiously),

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1   (c) the re-submission of the defective Revised Brief without adequate disclosure of

2   the use of AI." *Id.* at 4. Here, undersigned counsel immediately disclosed the use of

3   AI, once they became aware of it, and are seeking to submit corrective briefs.

4   Last, Fenix cites *Mavy v. Comm'r of Soc. Sec. Admin.*, No. CV-25-00689-

5   PHX-KML (ASB), 2025 WL 2355222, at *6 (D. Ariz. Aug. 14, 2025), to argue that

6   Plaintiffs outsourced their legal research to AI, failed to review and correct the

7   errors, and failed to tell the Court they were using AI. Undersigned counsel admit

8   they did not review the inserts from Ms. Boyd thoroughly enough and catch the

9   errors before filing, and they take full responsibility for that failure. But they did

10   not know AI was being used at the time of filing and they never outsourced their

11   legal research to AI. The facts of *Mavy* are also distinguishable. The signing

12   attorney in *Mavy* outsourced all the writing to a contract attorney, that contractor

13   was supervised by a second attorney, and it is unclear what role the signing attorney

14   took in reviewing the final brief. *Id.* at *2 (signing counsel and the attorney

15   supervisor "discussed the brief, reviewed it prior to signing and submission"). *Id.*

16   Here, the attorney who wrote the brief was a long-time co-counsel of Hagens

17   Berman and had over the ten years they worked together, produced quality cite-

18   checked work. Additionally, Mr. Carey worked closely with Ms. Boyd on many of

19   the sections, and he and other attorneys at Hagens Berman reviewed the briefs in

20   full, were familiar with the legal arguments and the majority of the opinions cited—

21   providing them confidence the cases were not hallucinated—but failed to perform a

22   detailed cite-check. Carey Decl. ¶ 11. Mr. Carey also spot-checked portions of the

23   brief when he became aware of issues with some record cites in the briefs, to ensure

24   AI had not been used. *Id.* ¶ 23.

25   Hagens Berman and Ms. Boyd have also been forthcoming about how AI

26   was used and what issues it caused. This is distinguishable from *Mavy*, where the

27   signing attorney "has not explicitly admitted to using AI to prepare her Opening

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1   Brief. Instead, Counsel points to Contractor's similar failure to make such an

2   admission and states 'the inability to verify the sources raised concerns that AI-

3   generated text may have been improperly included in the draft.'" *Mavy*, 2025 WL

4   2355222, at *5 (D. Ariz. Aug. 14, 2025).

5   Additionally, the severity and number of the mistakes in *Mavy* are

6   distinguishable.[8] There, counsel cited nineteen cases, three did not exist and only "5

7   to 7 of those cases exist <u>and</u> appear as quoted or generally stand for the proposition

8   for which they are cited." *Id.* at 4–5. Here, Plaintiffs cited fifty-seven cases in their

9   Response to the Fenix MTD. Of those fifty-seven cases, one case cite was fictitious

10   and six cases were cited for an incorrect proposition. Of those six cases, four were

11   properly cited for other propositions in the brief. There were also seven cases that

12   were cited for the correct proposition, but the quote or parenthetical was inaccurate.

13   Thus, only three of fifty-seven cases were generated by AI—the remaining cases

14   had been researched and vetted by counsel.

15   Last, Plaintiffs cite seventeen cases in their Response to the Motion for

16   Reconsideration. The errors generated by AI resulted in six cases being cited for an

17   incorrect proposition. Three of those six cases were cited for other, correct,

18   propositions in the brief. The remaining errors identified by Fenix were cases that

19   were cited for the correct proposition, but the quote or parenthetical was incorrect.

20   Furthermore, as described more fully below, the majority of the miscites were for

21   basic legal propositions.

22   Here, Fenix argues that the Court should grant their motions as a sanction to

23   Plaintiffs. But such a harsh result is not warranted here, because such a sanction

24   would result in the dismissal of Plaintiffs' claims. "[B]ecause the purpose of

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26   [8] All of the cases cited in Plaintiffs' Response to the RFJN were accurate. The
27   use of AI resulted in a false quote from the Court and an erroneous argument.
     Plaintiffs will withdraw their Response to the RFJN.

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1   imposing Rule 11 sanctions is deterrence, a court should impose the least severe

2   sanctions necessary to achieve the goal." *Mata*, 678 F. Supp. 3d at 465–66

3   (citations omitted). Additionally, "[w]hether that conduct supports the imposition of

4   various types of sanctions requires a fact- and circumstance-specific analysis."

5   *Lacey*, 2025 WL 1363069, at *3. Here, the errors were not intentional and Plaintiffs

6   should not be punished for a mistake made by their counsel, particularly where

7   counsel has been forthcoming with the Court and opposing counsel. Additionally,

8   the errors do not affect a large portion of the arguments at issue. In the Response to

9   the Fenix MTD, most of the changes involve the VPPA claim. The arguments on

10   the remaining claims have minimal changes. The errors do not affect the main

11   argument in the Response to the Motion for Reconsideration—that reversal is

12   warranted under *EpicentRx, Inc. v. Superior Court*, No. S282521, 2025 WL

13   2027272 (July 21, 2025). Finally, in moving to file corrective briefs, Plaintiffs want

14   to give Fenix the opportunity to file a response, which will ensure there is a

15   decision on the merits.

16   **B.   Plaintiffs propose corrections that will minimize the prejudice to Fenix.**

17   Plaintiffs' proposed changes consist of deleting any false cites and their

18   accompanying arguments and correcting the citation errors and parentheticals. With

19   one very minor exception—a case relied on heavily by Plaintiffs and the Court in

20   the original forum non conveniens briefing and decision—Plaintiffs are not asking

21   to substitute any of the erroneous citations with new cases.

22   **1.   Response to the RFJN.**

23   As outlined above, Plaintiffs Response to the RFJN contained a false quote

24   attributed to the Court, which included an entire argument based on a false premise.

25   ECF No. 138 at 13–14. Ms. Boyd relied on AI to summarize the Court's order and

26   draft an argument. Boyd Decl. App. A. To avoid any prejudice to Fenix, Plaintiffs

27   will be withdrawing their opposition to Fenix's Request for Judicial Notice. In

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finalizing all the briefs that were due on July 17, 2025, undersigned counsel undertook an extensive and thorough review of all record citations. Carey Decl. ¶ 12. During that review they found several erroneous cites to the record, which were new to them, and they corrected those. *Id.* Because of the number of firms that were involved in drafting these briefs, they did not know where the errors had come from. *Id.* They raised the errors with Ms. Boyd, and she maintained that she did not know how they happened. *Id.* Undersigned counsel speculated that perhaps the errors had come from citing to the wrong complaint. *Id.* Undersigned counsel thought they had caught and corrected all the record cites, but unfortunately they missed this one.[9] Fenix does not point out any additional record cites that were made in error. Undersigned counsel acknowledges that this particular error was egregious, and for that reason Plaintiffs are willing to withdraw their remaining arguments to the RFJN, even though those arguments were sound. Undersigned counsel also ran a full cite-check of the Response to the Motion to Strike, which was consolidated with the Response to the RFJN. Plaintiffs have made three small citation corrections to that portion of the brief as well for full transparency.

2.   Response to the Fenix MTD.

Undersigned counsel has done a thorough review of Plaintiffs' Response to the Fenix MTD. They have identified five categories of errors that they seek to fix with minimal prejudice to Fenix.

First, there is one cited case that does not exist.[10] Plaintiffs cite *Doe v. Match Group*, 2022 WL 4551660, at 6 (C.D. Cal. Aug. 12, 2022), for the proposition that a forum-selection clause is not enforceable where the gravamen of the action is

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[9] As explained elsewhere in this motion, Mr. Carey also undertook a spot check of the legal authority to ensure AI had not been used. Carey Decl. ¶ 23.

[10] Fenix argues there are two "decisions that do not exist." ECF. No. 163 at 1. But as explained below, *Cascade Yarns* is a real case that Fenix claims to have reviewed.

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1   fraud. ECF No. 141 at 13. Plaintiffs did not use AI to find a cite for this

2   proposition, which is an established principle of law. Rather, Ms. Boyd put a note

3   in her original draft that she needed to plug in a citation and that note was replaced

4   with a fake cite by ChatGPT. Boyd Decl. App. A. Plaintiffs request permission to

5   replace the cite with "*Doe 1 v. AOL LLC*, 552 F.3d 1077, 1084 (9th Cir. 2009)

6   ("California public policy is violated by forcing such plaintiffs to waive their rights

7   to a class action and remedies under California consumer law.")." Plaintiffs cited

8   *Doe 1 v. AOL* for this identical proposition in their Response in Opposition to

9   Fenix's Motion to Dismiss for Forum Non Conveniens. ECF No. 85 at 8. Likewise,

10 Fenix responded to that argument and the Court relied on it in denying Fenix's

11 motion in part. ECF No. 95 at 13; ECF No. 117 at 10.

12   Second, there are six cases that exist, but do not stand for the proposition

13 they were cited for: *Doe v. Roblox Corp.*, 602 F. Supp. 3d 1243 (N.D. Cal. 2022)

14 (ECF No. 141 at 19); *Mendoza v. Amalgamated Transit Union International*, 30

15 F.4th 879 (9th Cir. 2022) (ECF No. 141 at 24); *Calise v. Meta Platforms, Inc.*, 103

16 F.4th 732 (9th Cir. 2024) (ECF No. 141 at 31); *In re Hulu Privacy Litigation*, 86 F.

17 Supp. 3d 1090 (N.D. Cal. 2015) (ECF No. 141 at 31); *Archer v. NBCUniversal

18 Media, LLC*, 2025 U.S. Dist. LEXIS 129598 (C.D. Cal. July 2, 2025) (ECF No. 141

19 at 32); *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, 402 F.

20 Supp. 3d 767 (N.D. Cal. 2019) (ECF No. 141 at 37). Plaintiffs have deleted each of

21 those citations, and where appropriate, deleted the accompanying argument.

22   *Roblox*, 602 F. Supp. 3d at 1252, was cited to support Plaintiffs' breach-of-

23 contract claim, along with another case. Plaintiffs have deleted *Roblox* and will rely

24 on the remaining case, which will avoid any prejudice to Fenix. Similarly *Mendoza*,

25 30 F.4th at 889, was cited to support Plaintiffs' fraud case, along with another case.

26 Plaintiffs have deleted *Mendoza* and will rely on the remaining case, which will

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28

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1 again avoid further prejudice to Fenix. These cases appear to have been added by

2 ChatGPT to accompany existing citations. Boyd Decl. App. A

3   Plaintiffs' discussion of *Calise*, 103 F.4th 732, as it relates to the VPPA, has

4 been deleted in its entirety, to avoid any prejudice to Fenix. In drafting the brief,

5 Ms. Boyd put a note to "find a case on partial identifiers." Boyd Decl. App. A.

6 ChatGPT appears to have filled that in with *Calise*, another case Plaintiffs cited in

7 their brief.

8   Plaintiffs cite *In re Hulu*, 86 F. Supp. 3d at 1095 and *Archer*, 2025 U.S. Dist.

9 LEXIS 129598, at *14, to argue that "the ordinary course of business" carveout in

10 the VPPA is construed narrowly. As Plaintiffs do not cite any other cases for that

11 proposition, they have deleted those references and related arguments in their

12 entirety.

13   Plaintiffs cite *In re Facebook*, 402 F. Supp. 3d at 799, to show that CDAFA

14 includes economic harm. But as the text of the statute already states this on its face

15 and is included in the Response, Plaintiffs request that they be allowed to replace

16 that cite with the already cited statute.

17   Third, Plaintiffs cite seven cases where the case stands for the proposition it

18 was cited for, but include inaccurate quotes: *Briskin v. Shopify, Inc.*, 135 F.4th 739

19 (9th Cir. 2025) (ECF No. 141 at 9); *Cascade Yarns, Inc. v. Knitting Fever, Inc.,* No.

20 C10-861 RSM, 2011 WL 31862 (W.D. Wash. Jan. 3, 2011)[11] (ECF No. 141 at 11);

21 *Brown v. Google LLC*, 685 F. Supp. 3d 909 (N.D. Cal. 2023) (ECF No. 141 at 18–

22 19); *In re JUUL Labs, Inc., Marketing, Sales Practices & Products Liability*

23 *Litigation*, 497 F. Supp. 3d 552 (N.D. Cal. 2020) (ECF No. 141 at 24); *In re*

24 *Facebook*, 402 F. Supp. 3d 767 (ECF No. 141 at 31); *Kwikset Corp. v. Superior*

25 *Court*, 51 Cal. 4th 310 (2011) (ECF No. 141 at 38); *People v. McKale*, 25 Cal. 3d

26

27   [11] Plaintiffs include the correct cite here for *Cascade Yarns*, but address how the
   wrong cite ended up in the Response to the Fenix MTD below.

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626 (1979) (ECF No. 141 at 40–41). As each of these cases support the proposition they are cited for—and in six of the seven cases the misstatement occurred in a parenthetical—Plaintiffs request leave to file a corrective brief to correct the parentheticals.[12] Because Fenix has already reviewed and responded to these cases, replacing the parentheticals will not be prejudicial to Fenix. And Fenix will have the opportunity to respond to the changes.

Fourth, Plaintiffs had some errors in citations, specifically two cases and some subsections of the statutes. Fenix argues that *Cascade Yarns* does not exist, stating that the quoted language "does not appear in the *Cascade Yarns* January 3, 2011 order." ECF. No. 164 at 3 ¶ 13. Plaintiffs' citation had the correct case name and order date, but the Westlaw cite was wrong. When Dorsey & Whitney sent over their portions of the briefs, the citation for *Cascade Yarns*, was correct, as was the parenthetical. Carey Decl. ¶ 10 The original cite read: "*See Cascade Yarns, Inc. v. Knitting Fever, Inc.*, No. C10-861 RSM, 2011 U.S. Dist. LEXIS 279, at *28 (W.D. Wash. Jan. 3, 2011) ("Taking these allegations as true, the Court can infer from the specific acts and relationships alleged in the Amended Complaint that an agreement existed between these parties.")". *Id.* Ms. Boyd fed the citation into ChatGPT and asked it shorten the parenthetical. Boyd Decl. App. A. The resulting citation was incorrect and it changed the parenthetical to: "an agreement may be inferred from the specific acts and relationships alleged." Had ChatGPT not added quotation marks, the parenthetical would have been correct.

Plaintiffs have also corrected the other citations that were incorrect, including the correct citation for *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011), adding a missing subsection to 18 U.S.C. § 2710, and correcting a

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[12] In *McKale* the fake quote appears in the text of the motion. Plaintiffs propose deleting that quote and adding an accurate parenthetical.

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1   subsection of Cal. Penal Code § 502. Fenix had no problem identifying the correct

2   citations and therefore cannot claim any prejudice by these errors.

3   Fenix last argues that Plaintiffs responded to arguments it did not make or

4   complains about Plaintiffs' characterization of Fenix's arguments. Two

5   arguments—about whether the Agency Defendants are video service providers and

6   Plaintiffs are consumers under the VPPA—were inadvertently copied over from the

7   Response to the Agencies' MTDs and included in the Response to the Fenix MTD.

8   This error does not prejudice Fenix in any way, but out of an abundance of caution,

9   Plaintiffs have deleted those arguments. Plaintiffs have also corrected one

10 additional statement that Fenix has taken issue with, changing "these allegations

11 amount to mere omissions or passive indifference" to "these allegations are

12 insufficient," to remove any potential prejudice to Fenix.

13   Finally, undersigned counsel performed a thorough cite-check on the

14 Proposed Corrective Response to the Fenix MTD and fixed any errors to ensure

15 their remaining cites were completely accurate.

16   **3.   Response to the Fenix Defendants' Motion for Reconsideration.**

17   Plaintiffs have done a detailed review of the issues raised by Fenix regarding

18 Plaintiffs' Response to the Fenix Defendants' Motion for Reconsideration

19 ("Reconsideration Response"). Plaintiffs note that their discussion of *EpicentRx,*

20 *Inc. v. Superior Court*, 2025 WL 2027272 (Cal. July 21, 2025)—the basis of

21 Fenix's Motion for Reconsideration—was accurate and did not contain any AI

22 errors. Plaintiffs identify two issues that resulted from Ms. Boyd's use of AI. First,

23 there are nine cited cases that stand for propositions they were cited for, but contain

24 inaccurate quotes. Second, there were six cases that exist, but do not stand for the

25 proposition they were cited for.

26   Plaintiffs cited six cases for the incorrect proposition. Three of the cases were

27 cited for the unremarkable proposition that review is left to the discretion of the

28

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trial court: *Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081 (9th Cir. 2018) (ECF No. 158 at 4, 13); *Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.*, 28 F.4th 956 (9th Cir. 2022) (ECF No. 158 at 4); and *Gemini Technologies, Inc. v. Smith & Wesson Corp.*, 931 F.3d 911 (9th Cir. 2019) (ECF. No. 158 at 4). While that proposition is not controversial,[13] Plaintiffs will delete those cases and their related arguments to avoid any prejudice to Fenix. Two cases were cited for the proposition that when an order rests on two independent grounds, eliminating one does not compel a different result: *California ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319 (9th Cir. 1985)[14] (ECF No. 158 at 10); and *United States v. Woodbury*, 263 F.2d 784 (9th Cir. 1959) (ECF No. 158 at 10). Plaintiffs cite an additional case that does stand for that proposition, so they have deleted both of these cites to avoid prejudice to Fenix. Last, Plaintiffs cite *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005), to support another case that public policy may be judicially declared. ECF No. 158 at 9. As Plaintiffs have a case to support that proposition, they have deleted *Discover Bank*.

Four of the six cases were cited for a different, but correct proposition, in the response, and in the case of *Discover Bank*, related to the arguments being made but were not cited for the correct proposition. It appears that ChatGPT attributed false quotes to those cases. As explained above, Ms. Boyd did not check the cases and did not inform undersigned counsel that she had not performed a cite-check.

Plaintiffs cited nine cases for the correct proposition, but the parentheticals are inaccurate: *Stewart v. Wachowski*, 574 F. Supp. 2d 1074 (C.D. Cal. 2006) (ECF No. 158 at 3); *Planned Parenthood of the Great Northwest & the Hawaiian Islands*

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[13] *See Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003) ("Whether or not to grant reconsideration is committed to the sound discretion of the court.").

[14] Ms. Boyd admits that this is a case ChatGPT suggested to her and she did not check it. Boyd Decl. App. A.

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1   *v. Wasden*, 564 F. Supp. 3d 895 (D. Idaho 2021) (ECF No. 158 at 4, 12); *Gemini*

2   *Technologies, Inc. v. Smith & Wesson Corp.*, 931 F.3d 911 (9th Cir. 2019) (ECF.

3   No. 158 at 9); *Massachusetts v. United States*, 333 U.S. 611 (1948) (ECF No. 158

4   at 10); *Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081 (9th Cir. 2018)

5   (ECF No. 158 at 11); *Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.*, 28

6   F.4th 956 (9th Cir. 2022) (ECF No. 158 at 11); *Loritz v. CMT Blues*, 271 F. Supp.

7   2d 1252 (S.D. Cal. 2003) (ECF No. 158 at 14); and *In re Pacific Gas & Electric*

8   *Co.*, 280 B.R. 506 (N.D. Cal. 2002) (ECF No. 158 at 15). Plaintiffs request leave to

9   file corrective briefs that reflect correct parentheticals or quotations. Because Fenix

10   has already reviewed and responded to these cases, replacing the parentheticals will

11   not be prejudicial to Fenix. And Fenix will have the opportunity to respond to the

12   changes.

13   **C.   Plaintiffs corrected their Response to the Agencies' MTDs for full
             transparency.**

14
             In the process of drafting this motion, undersigned learned that Ms. Boyd had
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     used AI in her work on the Response to the Agencies' MTDs. As they were getting
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     ready to file this motion, they performed a thorough cite-check of Plaintiffs'
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     Response to the Agencies' MTDs as well, to ensure there were no AI errors. In
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     doing so they found some errors and corrected them for full transparency. Because
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     of the timing of these changes, Plaintiffs have not met and conferred with counsel
20
     for the Agency Defendants before bringing this motion. Plaintiffs understand they
21
     have not complied with the meet and confer requirements of L.R. 7-3. But Plaintiffs
22
     wanted to be fully transparent with this Court and include a redline of those
23
     changes with this motion. Plaintiffs can bring a separate motion, that complies with
24
     L.R.7-3 if the Court requests, and are ready to separately move for permission to
25
     file a corrective Response to the Agencies' MTDs after a meet and confer.
26
             As the attached redline shows, Plaintiffs deleted four cases that appear to be
27
     the result of AI. Two of those cases were the second cited case for the same
28
                                         -19-

1   proposition, so there is no prejudice to the Agency Defendants. The third deleted

2   case supported a single-sentence argument. Plaintiffs also deleted the argument to

3   avoid prejudice to the Agency Defendants. The fourth case that was deleted was a

4   standalone case, but it was superfluous because the statute that was cited supports

5   the same proposition (as the changes reflect). Last, Plaintiffs found some minor

6   errors in some of the citations or quotations and corrected them.

IV.   CONCLUSION

8   For the foregoing reasons, Plaintiffs respectfully request that the Court grant

9   Plaintiffs leave to withdraw ECF Nos. 138, 141, 142, and 158, and file corrective

10   briefs.

11   DATED: August 28, 2025   Respectfully submitted,

12   HAGENS BERMAN SOBOL SHAPIRO LLP
13
14   By /s/ *Robert B. Carey*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief

contains 6,673 words which complies with the word limit of C.D. Cal. L.R. 11-6.1.

Dated: August 28, 2025

HAGENS BERMAN SOBOL SHAPIRO LLP
/s/ Robert B. Carey
Robert B. Carey

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